

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

KEVIN MEYERS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:14-cv-01096-TWP-DKL
)	
RANDAL TRINNA NCCF Unit Team)	
Manager, BUTTS Mr., NCCF Warden,)	
)	
Defendants.)	

Entry Dismissing Complaint and Directing Further Proceedings

Plaintiff Kevin Meyers, an inmate at the New Castle Correctional Facility, filed this civil action alleging that his constitutional rights were violated on November 24, 2013. Meyers alleges that on that day he was strapped down between 2:00 p.m. and 11:00 p.m. During this time he “used the bathroom on [him]self several times and was not cleaned up at all.” Meyers names Randal Trinna and Mr. Butts as defendants. Meyers claims are brought pursuant to 42 U.S.C. § 1983. He seeks money damages and an institutional transfer.

I.

A.

The complaint is subject to the screening requirement of 28 U.S.C. § 1915A(b). Pursuant to this statute, “[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that plaintiff is not entitled to relief.” *Jones v. Bock*, 549 U.S. 199, 215 (2007). To satisfy the notice-pleading standard of Rule 8 of the Federal Rules of Civil Procedure, a complaint must provide a “short and plain statement of the claim showing that the pleader is

entitled to relief,” which is sufficient to provide the defendant with “fair notice” of the claim and its basis. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and quoting Fed. R. Civ. P. 8(a)(2)). To survive a motion to dismiss, the complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quotations omitted). Pro se complaints such as that filed by Meyers are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Erickson*, 551 U.S. at 94; *Obrieht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008). Nonetheless, “[p]ro se litigants are masters of their own complaints and may choose who to sue-or not to sue,” *Myles v. United States*, 416 F.3d 551, 552 (7th Cir. 2005), and the court may not rewrite a complaint to include claims that were not presented. *Barnett v. Hargett*, 174 F.3d 1128 (10th Cir. 1999); *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993).

B.

Applying the standard set forth above, the complaint must be dismissed for failure to state a claim upon which relief may be granted. There is no allegation of wrongdoing by defendants Trinna or Butts. “Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed.” *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974); see *Black v. Lane*, 22 F.3d 1395, 1401 and n.8 (7th Cir. 1994)(district court properly dismissed complaint against one defendant when the complaint alleged only that defendant was charged with the administration of the institution and was responsible for all persons at the institution). To the extent these defendants are included as defendants because of their

supervisory positions, these positions alone are not adequate to support the imposition of liability. *See West v. Waymire*, 114 F.3d 646, 649 (7th Cir. 1997)(“the doctrine of *respondeat superior* is not available to a plaintiff in a section 1983 suit”).

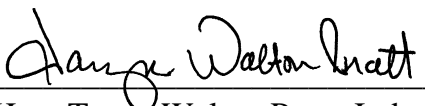
II.

For the reasons explained above, the complaint fails to state a claim upon which relief can be granted as to any of the defendants and is dismissed pursuant to § 1915A. The dismissal of the complaint will not in this instance lead to the dismissal of the action at present. Instead, Meyers shall have **through August 12, 2013**, in which **to file an amended complaint** which corrects the deficiencies noted above.

In filing an amended complaint, the plaintiff shall conform to the following guidelines: (a) the amended complaint shall comply with the requirement of Rule 8(a)(2) of the *Federal Rules of Civil Procedure* that pleadings contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .,” (b) the amended complaint must identify what legal injury he claims to have suffered and what persons are responsible for each such legal injury, and (c) the amended complaint shall contain a clear statement of the relief which is sought.

IT IS SO ORDERED.

Date: 07/14/2014



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Distribution:

KEVIN MEYERS

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